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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRIAN L. PATTERSON and BRIAN S. BEARDEN

Appeal 2009-014253
Application 10/767,356
Technology Center 3600

Before, MURRIEL E. CRAWFORD, ANTON W. FETTING and JOSEPH
A. FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-13 and 35-47. Claim 14-34 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants claim a system and method for computer-based storage devices to implement transaction-based storage services (Specification 2:¶ [0005]).

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method of computing, comprising:
at a processor in a storage network:

receiving a service request from a user of the storage network;
determining an amount of credit available on a local media for the user of the storage network;
implementing the service request at the processor when the amount of credit is sufficient to execute the service request; and

when the amount of credit is insufficient to execute the service request:
generating, in response to the received service request, a token request for a service token; and

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transmitting the token request to a server
communicatively connected to the storage network; and
at the server:

validating the token request;

transmitting to the processor a response to the validated
token request; and
at the processor in the storage network:

invoking the service request when the response to the
token request includes at least one service token.

THE REJECTION

The Examiner relies upon the following as evidence of
unpatentability:

Mutschler	US 2002/0069148 A1	June 6, 2002
Tohyama	US 2002/0091645 A1	Jul. 11, 2002

The following rejections are before us for review.

The Examiner rejected claims 1-7, 9-13, 35-41, and 43-47 under 35
U.S.C. § 102(b) as being anticipated by Tohyama.

The Examiner rejected claims 8 and 42 under 35 U.S.C. § 103(a) as
being obvious over Tohyama in view of Mutschler.

ISSUE

The issue of anticipation turns on whether the remote management server 3b of Tohyama implements a service request.

FINDINGS OF FACTS

1. The Specification discloses:

In a credit-based system a controller may maintain an account on a local storage medium that can have a debit or a credit balance. The unit of account is not critical; the account may be denominated in currency units, points, or other units. If the account balance (or the available credit) does not exceed the fee associated with the service request, then sufficient credit is available in the account stored on a local storage medium and control may pass to operation 855, at which the service request is executed, *e.g.*, by invoking a software application.

(Specification 20:¶ [0056]).

2. Tohyama discloses a server based license management system such that a:

...license management program 3a in the license management server machine 3 reads out, from the user account database 3b, the license data that corresponds to the received user ID "3" and to the application ID "e-1" (s88, s90), and judges the validity of this license data (s92). In this validity judgment, a judgment of "Valid" is made only in the case where the license data exists and the "remaining amount of the license" in the license validity in FIG. 4 has a value that is greater than zero such that the "license status" is "Valid".

(¶ [0098]).

3. Tohyama discloses:

The issuing of the pass is performed based on the license base of the license data that was read out from the user account database *3b* at step 90. That is, the license management program *3a* performs the processing of replacing the "remaining amount of the pass" of the "pass validity" corresponding to the application ID "e-1" with the "total number of times=1 time" shown in the "pass term/number of times (of usage)" included in the "pass issuance regulations" of the license base, creates the pass (FIG. 8(a), s116), and sends the pass to the user terminal 4 (s118).

(¶ 0100).

4. Tohyama further discloses:

... the user terminal 4 boots the license management program which is composed of the license controller *4a* and the license manager *4b* (s30), the license controller *4a* obtains the application ID "a-I" and the usage data (UsageInfo) from the software which is installed in the user terminal 4. The usage data is data which indicates a term/number of times that the user terminal has actually used the content for which usage was approved, based on the present licensing system.

(¶ [0063]).

ANALYSIS

We affirm the rejections of claims 1-13 and 35-47.

Independent claims 1 and 35 require a local controller comprising a processor which receives a service request from a user of the storage network and at which processor the service request is implemented when an amount of credit is sufficient to execute the service request.

The Examiner found that the limitation of *implementing the service*

request at the processor when the amount of credit is sufficient to execute the service request is disclosed in Tohyama at ([0086], shows access granted for time remaining on license; [0049], lines 1-11; and [0053], lines 33-45, shows services.

Appellants argue that:

... the Examiner also cited ¶[[0086] of Tohyama as disclosing "implementing the service request at the processor when the amount of credit is sufficient to execute the service request." This passage of Tohyama refers to tasks performed by a licensed controller 4a in a user terminal 4, as shown in Fig. 1 of Tohyama. The user terminal 4 is separate from the license management server machine 3 of Tohyama--in fact, as shown in Fig. 1 of Tohyama, the user terminal 4 is separated from the license management server machine 3 by an Internet network 5. Thus, the Examiner has alleged that different tasks performed by the user terminal 4 and the license management server machine 3 correspond to tasks performed at a processor in claim 1. Such a mapping of the teachings of Tohyama to the elements of claim 1 is improper.

(Reply Brief 2).

We disagree with Appellants.

We refer to the Specification and find that Appellants describe that the function of *implementing* is detailed at "(Fig. 8, reference numeral 855; paragraph [0056] at page 21, lines 5-18)." (Appeal Br. 3). Here, the Specification describes that a system controller also maintains an account on a local storage medium, and if the account has sufficient credit, the service request operation 855 (FF 1) is executed (Figure 8). Thus, according to the

Specification, the process of implementing collectively uses an account based at a remote medium in conjunction with that of the system controller.

We thus find to the extent that Appellants' step of implementing involves the cooperation of both the remote medium to account for credit balance and the system server to execute a service request, Tohyama anticipates independent claims 1 and 35. This is because we read the license manager 4b in Tohyama to correspond to Appellants' account on the local storage medium because the manager 4b, like the account on the local storage medium, similarly tracks usage in units (FF 1, 4), which usage data is used by the management server 3b of Tohyama to implement a service request. Thus, we do not find error in the Examiner's citation of ¶ [0086] in Tohyama because implementing the service request occurs at the processor 3b only with the necessary cooperation of the license manager 4b.

Concerning the arguments raised by Appellants in the Reply Brief to claims 3 and 7, the Examiner found that Tohyama discloses the requirements of claim 3 at (¶ [0009]). (Answer 6). This section of Tohyama discloses the transmission of licensed content to others from a licensing terminal to a user terminal.

Claim 3 recites, in pertinent part, the service request comprises a request for at least one of a data mirroring service, a remote copy service, a back-up service, a recovery service, or a LUN extension service.

We find with the Examiner that the implementing of licensed content material is a form of data mirroring because the licensed content is a copy or mirror image of that which resides on a server as the original.

The Appellants' arguments presented in the Appeal Brief, amount to no more than statements which merely point out what each claim recites juxtaposed to the cited section of the prior art applied by the Examiner. At best, Appellants' seem to assert that because the cited portions of Tohyama do not disclose the exact language of the claims, Tohyama thus does not anticipate. However, anticipation "is not an '*ipsissimis verbis*' test." *In re Bond*, 910 F.2d 831, 832-33 (Fed. Cir. 1990) (citing *Akzo N.V. v. U. S. Int'l Trade Comm'n*, 808 F.2d 1471, 1479 n.11 (Fed. Cir. 1986)). "An anticipatory reference ... need not duplicate word for word what is in the claims." *Standard Havens Prods., Inc., v. Gencor Indus., Inc.*, 953 F.2d 1360, 1369 (Fed. Cir. 1991). Also, a statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. See, 37 C.F.R. § 41.37 (c)(1)(vii) (2004). As such, these statements will not be considered an argument for separate patentability of the claims.

Furthermore, Appellants have not rebutted in their Reply Brief further findings made by the Examiner in the Answer¹, and hence have not

¹

Appellant argued in the Appeal Brief that the Tohyama reference does not disclose or suggest "generating, in response to the received service request, a token request for a service token, transmitting the token request to a server communicatively connected to the storage network".

In reply, the Examiner however additionally found that:

Tohyama discloses, in paragraph [0106], lines 9-15, returning a request for service, when the amount of validity is insufficient. "...remaining amount of times=0 times", so the license data is judged to be "Invalid"... sends the license

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overcome the prima facie case made by the Examiner.

AFFIRMED

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menu to the user terminal..." The license menu is transmitted to the user, so that the user can perform any necessary tasks in order to change the current standing from "invalid" to "valid" and receive a new attempt at using the service.

(Answer 11).